

BRIGHT FROM THE START
GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING
CHILD NUTRITION PROGRAMS

Procurement Manual for Federally Funded Programs

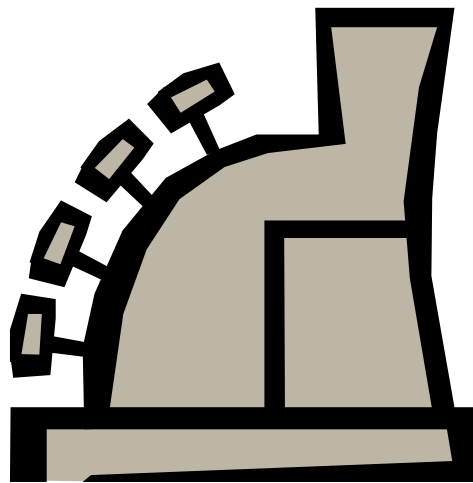


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Procurement in Federally Funded Programs

Introduction

The Child and Adult Care Food Program and the Summer Food Service Program institutions are required to maintain a non-profit food service program in order to be eligible to participate in the programs. CACFP and SFSP reimbursements must be solely used for the operation or improvement of the food service. In maintaining the non-profit food service account, the institution has the responsibility of using CACFP and SFSP funds wisely when making purchases with reimbursement. Therefore all purchases made with or without the intent to be made with Federally funded monies must be made using competitive procurement practices. Procurement is the act of obtaining goods and services by purchase, rental or barter. Goods and services purchased with funds received through the CACFP and the SFSP should be acquired according to the procurement procedures outlined in the uniform requirements listed below. Depending on the type of institution conducting the procurement, there are different requirements and principles to follow. To determine which uniform requirements your institution must follow, use the Step-by-Step guide in this document.

The uniform requirements and principles are provided in the following documents:

- 7 Code of Federal Regulations (C.F.R.) Part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments;
- 7 C.F.R. 3017, Governmentwide Debarment and Suspension (Nonprocurement);
- 7 C.F.R. 3018, New Restrictions on Lobbying;
- 7 C.F.R. 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations**;
- 48 C.F.R. 31, Contract Cost Principles and Procedures;
- Office of Management and Budget (OMB) Circulars A-102, Uniform Requirements for Assistance to State and Local Governments;
- A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. Allowable contract costs are determined through application of the cost principles in Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments;
- OMB Circular A-122, Cost Principles for Nonprofit Organizations.

****7 C.F.R. 3019 has not been updated to reflect the Federal small purchase threshold fixed at 41 United States Code 403(11). The Federal small purchase threshold is currently \$100,000.**

The documents mentioned above can be found on the Internet at http://www.access.gpo.gov/nara/C.F.R./waisidx_01/7C.F.R.v15_01.html - 3000 or <http://www.whitehouse.gov/omb/grants/>

Uniform Requirements and Program Regulations

Additional requirements apply through program regulations, FNS Instructions, policies, handbooks and guidance materials. The Child and Adult Care Food Regulations are found at 7 C.F.R. Part 226. The Summer Food Service Program regulations are found at 7 C.F.R. Part 225. When conducting a procurement action, the uniform requirement regulations (either 3016 or 3019) must be followed. In addition, procurement requirements that are specific to the regulations would still apply. For example, SFSP regulations require bid and performance bonds. While these bonds are not required in 3016 or 3019, it is required by the SFSP regulations, and therefore, must be followed. This manual does not include specific requirements for each program regulation.

Pre-procurement Guidelines

Prior to purchasing any goods or services, the institution is required to do the following:

- Identify the goods or services actually needed by determining how the goods or services will be used
- Review current inventories and goods on order to prevent duplicative purchases
- Assess whether services can be provided by current staff
- Determine if lease versus purchase is more economical

Purpose of Procurement

Procurement requirements are based on competitive purchasing procedures. All procurement actions must be conducted to maximize full and open competition. This means that an institution cannot just simply pick a company to use. It must either informally procure by contacting several suppliers and getting the best price for the product or services being purchased or formally advertise and obtain bids.

Competitive procurement does not mean that the institution takes whatever it can get from a supplier. The institution must specify in the solicitation documents exactly what product is needed from the supplier. However, the institution must also keep in mind the prohibited practices that would prevent a potential supplier from being able to provide the product or service (See Prohibited Practices section). For example, a name brand cannot be specified, as this would limit the procurement action by allowing only the brand supplier to qualify.

Types of Procurement

The amount of the contract will determine what type of procurement must be conducted, either informal or formal procurement. Generally procurement codes have a small purchase threshold, which if exceeded, requires the institution to use formal procurement methods. Small purchase procedures are usually less formal and can be at times accomplished by calling around to get the best price. For example, if the small purchase threshold for the codes being used is \$10,000, all purchases up to this amount can be conducted using small purchase procedures. Contracts that would cost over \$10,000 would have to be procured using formal procurement methods. Formal procurement is more involved and usually requires advertising for bids. Use the Step-by-Step guide on the following pages to determine what procurement rules your institution must follow and the type of procurement method that should be used.

Step by Step Guide to Procurement

This guide can be used in conjunction with the checklist that is provided in Appendix A.

Step 1: Determine the Management Rules that apply to your institution:

Based on the type of institution, your institution may be required to follow Federal Procurement Codes, the State or Local Government procurement codes, or your Institution's own procurement codes. Find your type of institution below to determine what rules apply to your institution and what codes will be followed.

(1) TYPE OF INSTITUTION	(2) PROGRAM REGULATIONS	(3) GENERAL MANAGEMENT RULES	(4) PROCURE- MENT RULES	(5) PROCUREMENT CODE OPTIONS	(6) ALLOWABLE COST RULES
Public Schools	Parts 225, 226	Part 3016	Sections 3016.36(b) – (i), 3016.60 2/, 3	Must follow State or local procurement codes except for provisions, which are inconsistent with Federal procurement requirements. State or local codes must be more stringent than Federal.	OMB Circular A-87
Public Institutions (Local governments)	Parts 225, 226	Part 3016	Sections 3016.36(b) – (i), 3016.60 2/, 3	Must follow State or local procurement codes except for provisions, which are inconsistent with Federal procurement requirements. State or local codes must be more stringent than Federal.	OMB Circular A-87, FNS Inst. 796-2
Private Non-profit Institutions	Parts 225, 226	Part 3019	Sections 3019.40 – 48	May follow own procedures or Federal procurement rules	OMB Circular A-122, FNS Inst. 796-2
For-Profit Institutions	Part 226	Part 226	Section 226.22	Must follow procurement rules listed in Part 226.22	Federal Acquisition Regulation (48 C.F.R. Part 31), FNS Inst. 796-2

Please note that 7 C.F.R. Part 226.17(b)6, 19(b)9, and 19a(b)7 allows CACFP centers to utilize an existing school food authority without adhering to the FSMC procurement requirements, but must enter into a written agreement that contains all of the pertinent parts of the meal arrangement.

Step 2: Based on the Management rules that apply, determine what procurement code will be followed.

By looking at the chart on the previous page, the fifth column indicates what codes your institution will need to follow. For example, if you are a private non-profit, you must choose whether to follow your institution's procurements codes or the Federal procurement codes. The institution must choose the appropriate codes and use these codes throughout the procurement process.

Step 3: Determine the full amount of the goods or services to be purchased for the year.

When purchases are to be made, the total amount of **annual** purchases of the item to be purchased should be determined. When vending for meals from a food service management company, the amount of the contract for the year would be considered. When purchasing products, similar items that the institution will buy for the Fiscal Year should be considered. When determining the total or aggregate amount of the contract of products, you must determine potential sources of supply. For example, if an area has distributors that carry many or all of the products that need to be purchased, then the anticipated value for all products that could be obtained through the distributor must be added together to determine the total cost. If the majority of the suppliers are single item or specialty products (meaning the distributor carries only fresh produce, or only frozen products, or milk) then aggregating can be limited to the value of a specific product. Keep in mind that intentionally dividing items so that the small purchase threshold is not exceeded is in violation of the procurement requirements.

Step 4: Based on the procurement codes (an institution's own, State, or Federal codes) you determined in step 2 that would be followed, determine whether the purchase can be conducted through formal or informal procurement. If the amount of the goods or services to be purchased exceeds the small purchase threshold, then formal procurement is necessary.

TYPE OF ORGANIZATION	SMALL PURCHASE THRESHOLD
Public Schools	State/local thresholds will vary. If State/local thresholds for small purchases are lower than the Federal threshold, SFA must apply state/local threshold since it is more stringent.
Public Institutions (Local governments)	State/local thresholds will vary. If State/local thresholds for small purchases are lower than the Federal threshold, institution must apply state/local threshold since it is more stringent.
Private Non-profit Institutions	Institution's own small purchase threshold may vary. Federal small purchase threshold is \$100,000.
For-Profit Institutions	Small purchase threshold is \$10,000

Step 5: If formal procurement is necessary, determine which type of formal procurement method should be used.

- Sealed Bids are used when:
 - The item or service can be specifically identified;
 - Responsive bids will differ only by price;
 - More than one qualified source is willing and able to compete for the award;
 - The expertise to negotiate contract terms and price with potential bidders is not available.
- Competitive Proposal (Competitive Negotiation)** is used when:
 - Permitted for public entities by State and local requirements;
 - Expectations can be identified, but more than one method can be used to accomplish those expectations;
 - Actual services or how the services will be performed cannot be defined;
 - Developmental services (development of a product) are needed;
 - Acceptable offers will differ both technically and financially;
 - Sufficient skill and expertise are available to evaluate proposals and conduct negotiations with top offerors.

**** 7 C.F.R. Part 225 (SFSP regulations) do not allow Competitive Negotiation. Part 225.15(g) requires that SFSP sponsors use the sealed bidding method of procurement.**

- Mixed Needs is used when:
 - When commercial items and negotiable services are needed from the provider.
- Noncompetitive negotiation is used when:
 - The award of a contract is infeasible under small purchase, sealed bids or competitive proposals and one of the following exists:
 - Inadequate competition exists in formal procurement;
 - A public emergency exists for the acquisition that does not permit the delay that would occur if formal procurement procedures were used;
 - The State agency authorizes noncompetitive negotiation in advance of the procurement.
- Sole source is used when:
 - Goods or services are available on a national or international basis from only one manufacturer through only one distributor or supplier (**all sole source procurements require prior written approval by FNS**).

This manual provides instruction for the Small Purchases Procedures and the Sealed Bid Procedures, which are the most commonly used procedures. Contact the state agency for instruction concerning other types of procurement. A glossary of terms is provided at the back of the manual. It may be useful to review these terms prior to reading the instructions.

Requirements

The following is a list of requirements that the institution must follow when procuring goods and services.

Standards of Conduct - All organizations must establish and maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the organization shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent would be involved. See Conflict of interest section below to see items that should be included in the Standards of Conduct.

Conflicts of Interest - No employee, office or agent of the organization can participate in the selection, award or administration of a contract supported with Federal funds if a conflict of interest, real or apparent, would be involved. Professional, social and personal activities and actions that compromise the Program's integrity must be avoided at all times. Real and apparent conflicts of interest exist when:

- The transaction is not arms-length;
- The employee, officer or agent; any immediate family member of same; partner or organization that employs or is about to employ any of the above has a financial or other interest in the firm selected for the award;
- Organizational structures and personnel practices exist that undermine the independence and integrity of the procurement process;
- The official responsible for determining bid or proposal responsiveness is not independent, i.e., another individual within the organization can overrule the official;
- Gratuities, favors or anything of monetary value are solicited or accepted from current or potential contractors on behalf of any individual or the organization before, during or after contract award;
- Any action, inaction or relationship with current or potential contractors gives the appearance of a conflict of interest, whether or not such a conflict, in fact, exists.

Encouraging Small and Minority Owned Businesses - To encourage business activity and ensure maximum full and open competition, efforts must be taken to solicit participation by small, women's owned business enterprises and minority owned businesses in procurements. The following steps can be used:

- Including these firms on solicitation lists
- Notifying these firms of proposed procurements
- Using the Small Business Administration

Documentation - All aspects of each procurement, including the rationale for the procurement method selected, contract type selected and basis for contract price, must be documented. All records documenting the procurement, including all extensions and renewals, must be retained for the organization's record retention requirements or for 4 years, whichever is longer. Records must be retained beyond this period until all pending matters are resolved. Failing to maintain required records can result in audit and review findings, cost disallowances and prevent the organization from effectively responding to bid protests and contract disputes.

Purchaser Responsibilities - Organizations are responsible, without recourse to Food and Nutrition Services, for all aspects of the procurement process. Purchaser responsibilities include:

- Establishing procurement procedures and systems that comply with applicable Federal, State and local requirements.
- Evaluating all aspects of the procurement process to ensure procurements are conducted according to requirements.
- Resolving and settling all contractual and administrative issues arising out of procurements, including source evaluation, protests, disputes, and claims.
- Ensuring ethical safeguards exist and are maintained at all levels in the organization and in all aspects of the procurement process.

Protest Procedures - Federal requirements and guidance do not relieve an organization of responsibility for its procurements or its contracts. Organizations must have protest procedures to handle and resolve disputes relating to procurement and must, when requested, disclose information regarding the protest to FNS.

Contracts/Written Agreement - A contract is an exclusive document requiring specific performance by both parties. A written contract is required when the procurement exceeds the small purchase threshold. A written agreement, purchase order or contract can be used for small purchase procurements.

Prototype Contracts - The organization is expected to use the State developed prototype contract when available. Bright from the Start has a prototype contract to use with sealed bids with a Food Service Management Company (FSMC). The organization must obtain the **prior written approval of the State agency** when the prototype contract will not be used or to modify any term or condition of the State prototype contract.

7 C.F.R. Part 225.6(h)(2) (Summer Food Service Program participants) allows some sponsors to use their existing or usual form of contract, but it must be submitted to and approved by the State agency.

- The method of procurement will determine when contracts are prepared. When sealed bids are used, the Invitation For Bid (IFB) usually serves the dual purposes of soliciting bids and, when executed by both parties, becoming the contract. As a result, all required contract terms and conditions must be included in the IFB. Since both the organization and the successful bidder will be bound by these terms, the organization must allow for sufficient time for the IFB to be reviewed for legal sufficiency prior to issuing bids.
- When competitive proposals are used, the nonnegotiable terms of the contract are included in the Request For Proposal (RFP), while the negotiable contract terms are identified in the RFP, but the actual contract language is not prepared until after negotiations have been completed and an award made. The organization should ensure the nonnegotiable terms are reviewed for legal sufficiency prior to issuing the RFP.
- Nonsubstantive revisions to correct clerical type errors are permitted for both IFB and RFP based contracts. All other contract amendments are restricted to:
 - Amendments and revisions permitted by State and local requirements;
 - Only the provisions specifically identified in the initial procurement solicitation and resulting contract as subject to amendment;
 - Amendments that do not substantially change the scope or terms of the contract;

- Changes in pricing structures that reflect measurable indexes that were described in the solicitation documents and resulting contract.

Contract Duration - There are no specific limits on contract duration in the CACFP or SFSP. Therefore in the absence of other regulatory guidance will use the National School Lunch regulations, which provide that FSMC contracts are limited to a **one-year duration, with up to four one-year renewals**.

Small Purchase Procedures

Small purchase procedures can be used when the small purchase threshold of the procurement codes being used are not exceeded. Follow the steps below to conduct a small purchase procurement action. Bright from the Start requires the use of the “Small Purchase Item Documentation” form to be used to document small purchase procurement (Addendum B). The institution should attach any additional documentation to this form. When contracting for meals, Bright from the Start has a sample Agreement, found in Addendum C, which can be used with these types of procurement. The sample can be modified to meet the institution’s needs.

- 1) Price or rate quotations must be obtained from an adequate number of qualified sources. The recommended number of sources is three (3). Two is the minimum, but more would be better. Qualified means the supplier is able to meet required licensing or certification requirements, is not prohibited from participating in the procurement action, and can fulfill the organization’s requirements.
- 2) Solicitation documents must be maintained and must provide sufficient information to permit an eligible supplier to respond. At a minimum, this must include:
 - A description of the goods or services needed, including quantity, required certification, licensing, etc.;
 - The date by which the goods or services must be provided; and
 - Any other pertinent terms or conditions required by the organization.
- 3) Written price or rate quotations must be obtained, with the price or quote valid for a specified time period. Price and rate quotes obtained orally must be confirmed in writing, identifying the pertinent details of the transaction including:
 - The name of the individual soliciting the information;
 - The name of the company solicited and the individual providing the price or rate quotation;
 - The date the information was provided;
 - The goods or services to be purchased, including the quantities upon which the price or rate quote was provided;
 - All pertinent terms or conditions imposed by either party; and
 - The duration of the price or rate quotation. A new solicitation must be conducted for purchases that will be made after the current quotation expires .
- 4) Negotiation of price and terms can be done; however, all potential suppliers should be treated fairly and given the same opportunity to match or better price and terms.

- 5) All information used to solicit and select a supplier must be maintained, in addition to information documenting the actual purchases made from the successful supplier. This information includes:
- Copies of solicitation documents;
 - Names and dates of suppliers contacted by phone;
 - Copies of letters, e-mails and faxes soliciting price or rate quotations;
 - Trip reports identifying suppliers contacted in person;
 - Copies of price or rate quotations received, including telephone quote confirmations;
 - Notification to the successful supplier; and
 - Purchase documents, such as invoices, bills of lading and canceled checks.

Sealed Bid Procurements

The major elements of the sealed bidding process are listed below. Many of the steps listed below site steps in the Federal Procurement Codes. When not using the Federal Procurement Codes, the institution should ensure that specific steps, including timeframes, in the procurement codes being used are followed.

1) Preparing the Invitation For Bid (IFB) - A comprehensive, well-prepared IFB is critical for a successful competitive sealed bid procurement because the award will be made to the lowest priced responsible bidder meeting the terms and conditions of the solicitation.

Considerations for IFB preparation include developing:

- Specifications that identify all of the characteristics needed to obtain the quality and quantity of goods or services.
- Other terms and conditions that identify all of the factors needed to provide the goods or services in the required quality, time, and manner.
- Contractor capability criteria that are not open ended. A responsive bidder must respond to each of the required elements and each response must be evaluated on a pass/fail basis. Contractors cannot receive additional consideration or credit for supplying information that is not required in the IFB. The criteria must:
 - Include all relevant factors necessary to determine if the bidder has the capability to perform successfully (i.e. has required certifications, etc.);
 - Establish the minimum standards a responsive bidder must meet; and
 - Identify the means by which potential contractors can demonstrate compliance with those standards (i.e. supplying certificates or licenses).
- Specific clauses in the IFB that include:
 - Date, time and place bids are due;
 - Whether post mark or delivery date will be used to determine if the bid was submitted timely;
 - The time and place the public bid opening will occur;
 - Clarification and bid withdrawal procedures;
 - A statement that a contract will be awarded to the lowest bidder, whose bid includes all of the material requirements of the IFB;
 - An explanation of when the contract will be awarded, i.e., at bid opening or upon the approval or ratification by officials of the organization;
 - A statement that sealed bids must be submitted;

- A statement that all nonresponsive bids will be rejected;
 - A statement about the pricing structure of the contract, i.e., fixed price. When a fixed price contract with economic adjustment or prospective price redetermination will be awarded, the IFB must also:
 - Identify whether the pricing structure will be fixed price with economic adjustment or fixed price with prospective price redetermination;
 - Identify the period during which the initial bid price is fixed;
 - Include a provision for both upward and downward price adjustments;
 - The occurrences that will result in an adjustment;
 - The standards or indexes that will be used for adjustments; and
 - The base to which the standards or indexes are applied. For contracts subject to more than one adjustment event during contract duration, the bid documents must identify if the base for price adjustment is the initial bid price or subsequently adjusted price.
 - A statement establishing the organization's right to reject all bids for sound business practices.
 - **7 CFR 225.15(h)(4)(i)-(xii) state that SFSP sponsors must provide all bidders who respond to the advertisement an IFB that must include:**
 - **a cycle menu approved by the State agency;**
 - **food specifications and meal quality standards;**
 - **a statement requiring compliance with SFSP regulations;**
 - **nonfood items essential for conducting the food service;**
 - **special meal requirements to meet ethnic or religious needs or dietary modifications for children with special physical or medical needs, only if these are necessary to meet the needs of the children to be served; and**
 - **the location of the sponsor's sites and the estimated range of meals required.**
- The sponsors IFB must not include:**
- **specify a minimum price;**
 - **provide for loans or any other monetary benefit, term, or condition to be made to sponsors by food service management companies; nor**
 - **include nonfood items which are not essential to the conduct of food service.**

2) Advertising the IFB - Full and open competition must be conducted; therefore it is necessary to advertise the bid. State designated newspapers, trade periodicals and designated Internet sites as well as other print media that serve the business community may be used.

- Food Service Management Company (FSMC) solicitations for the CACFP and SFSP must be announced at least 14 days in advance of the due date of the bids.
- In the absence of applicable State and local rules, other solicitations should be publicly announced at least 14 days before the response is due unless an emergency or good cause exists for expediting the acquisition.
- **7 CFR 225.15(h)(4)(i)-(xii) states that SFSP sponsors must notify State Agency of the time and place of the bid opening at least 14 calendar days prior to the opening of the bids.**
- **State Agency will attend all SFSP bid openings for contracts over \$100,000.**

The content of the announcement must provide enough information for potential contractors to identify:

- The general nature of the goods or services sought;
- The method of procurement that will be used, i.e. sealed bids or competitive proposal;
- The means that interested parties can obtain the required solicitation documents or information, including a contact name and number; and
- The date, time and place quotes, bids, or proposals must be submitted.

When determining response dates, thought must be given to various factors in order to allow adequate time for the entire process to take place. The following factors should be considered:

- The date by which contract performance must begin;
- The time needed by the contracting agency to prepare the solicitation documents, advertise, prepare the contract, obtain approval of the contract (if applicable) and execute the contract;
- The time needed by potential contractors to draft a response according to the complexity of the proposed acquisition.

3) Safeguarding Submissions - All submissions must be safeguarded.

- Submissions must be kept in a secure location, preferably locked or otherwise protected.
- Access to submissions must be limited to authorized personnel.
- A record of all submissions received must be kept and include the following pertinent data:
 - Name of individual or firm;
 - **Date and time** the submission was received;
 - Whether the submission arrived sealed or unsealed; and
 - Method by which the submission was received, i.e., by mail, messenger, etc.

4) Opening submissions - Submissions must be processed according to the procedures identified in the solicitation documents. At a minimum, the following procedures must be observed:

- The name of the individual or firm making the submission must be recorded.
- All submissions missing required information must be rejected.
- All nonresponsive submissions must be rejected. Examples of unresponsive bids include:
 - Bids received unsealed.
 - Bids which do not conform to the bid specifications, such as product grade, quality, pack size, etc.
 - Bids that change the terms and conditions of the IFB, for example, bids that change delivery schedules.
 - Bids that fail to contain required bid bonds, certifications, etc.
 - Bids that fail to comply with applicable State, local, Federal requirements.
 - Bids submitted late.

5) Responsive Bids – Responsive bids must meet all material requirements of the IFB. All required elements of a sealed bid must be evaluated on a pass/fail basis. The use of scoring or ranking cannot be used to evaluate sealed bids. Any bid that fails to meet a material requirement is a nonresponsive bid.

6) Lowest Price - Lowest price must be computed using the factors specified in the IFB. These specified factors can include volume purchase and prompt payment discounts, rebates, pallet or carton return credits, and transportation costs, when these factors are both relevant and routinely used. All mathematical computations, including extensions, subtotals, totals and net costs submitted in the bid must be verified through independent computations at the bid opening. The computation of lowest price cannot include factors not identified in the IFB, credits, rebates, or discounts not routinely utilized, or any unallowable cost or credit.

Unallowable costs and credits include:

- Donations to a general operating fund, scholarship fund, professional or charitable organizations.
- Gifts, incentives or awards to individuals or the organization.

7) Bid Award – Bid award occurs after the bids are publicly opened. The bid opening should be conducted formally. The following procedures are usually observed:

- An announcement at the start of the bid opening identifying the purpose of the meeting (bid opening), the solicitation by name, number and purpose;
- Each attendee stating his/her name, title, and company or organization represented;
- A statement by the bid opening official if the actual award of a contract must be approved or ratified by officials of the organization;
- The name of each bidder read aloud and recorded as the bid is opened;
- An announcement by the bid official of any unsealed bid, naming the bidder and rejecting the bid; and
- A written record, that is retained, identifying the solicitation, all attendees at the bid opening, and the results of the bid opening;
- The bid should be checked to determine responsiveness and whether all required forms, certification and information have been submitted.
 - Any nonresponsive bid must be rejected;
 - All bids missing required information must be rejected at the time the bids are opened;
 - The mathematical accuracy of the responsive bids should be verified and announced. In the event of mathematical errors, the terms of the solicitation, established procurement practices of the institution and applicable State and local regulations will apply. Depending on the applicable rules, the institution may be required to reject the bid or permitted to correct minor clerical errors.
 - The verified lowest price bidder must be announced publicly.
- An award is final when announced at the bid opening unless:
 - Verification of bidder information has been reserved; or
 - Officials of the organization must ratify the award.
- For CACFP sponsors, contract execution can be immediately after contract award or later when post bid verification or ratification is required.
- **7 CFR 225.15(h)(4)(i)-(xii) states that SFSP Sponsors submit copies of all bid received are submitted to the Start agency, along with the sponsor's reason for choosing the successful bidder and must request State agency approval before acceptance of the bid, along with a bid bond.**
- **Bright from the Start will respond with an approval or denial within 5 working days of receipt.**

Prohibited Practices

Prohibited Practices are actions that limit, restrain or restrict competition. Prohibited practices include:

- Noncompetitively awarded contracts, regardless of amount. Awarding a contract without competition is prohibited in all cases. This prohibition applies regardless of the method of award used, i.e., small purchase or formal procurement procedures, including noncompetitive negotiation. Costs resulting from noncompetitive awards are unallowable nonprofit food service account expenses;
- Awarding a contract to a potential contractor that drafted bid or proposal specifications, contract terms or conditions, or other procurement or contract documents or procurement process procedures;
- Unreasonable requirements placed on firms for them to qualify to do business; This includes:
 - Imposing excessive bonding requirements;
 - Requiring excessive or inappropriate liability insurance; and
 - Requiring specific skills, education or experience beyond what is needed to perform successfully.
- Geographical preferences or procedures that provide a competitive advantage based on geographic location in the evaluation or award of bids or proposals. State statutory or administratively imposed in-State or local geographic preferences are prohibited in all procurements conducted under the Child Nutrition Programs. This prohibition does not conflict with the statutory requirements for “Buy American;” Geographical preferences are not prohibited for non-public institutions following 7 CFR 3019;
- Limiting, without cause, the time to respond to a solicitation to the extent that competition is irreparably impaired;
- Seeking price quotes from only one source under small purchase procedures when more than one source is available;
- Contacting suppliers that are related or affiliated with one another;
- Drafting specifications, other procurement terms, award criteria or contract terms so that only one source can respond successfully;
- Failing to draft procurement documents that accurately describe all of the goods and services to be obtained/performed. This includes failing to notify potential FSMC contractors under the cost reimbursable contract pricing method that all reimbursable costs for purchased goods and services must be competitively procured, i.e., foods, nonfood supplies, subcontracted labor, etc.;
- Awarding a contract without conducting noncompetitive negotiations when inadequate competition exists;
- Failing to negotiate in good faith with potential suppliers so that the award is given to a preferred supplier;
- Collusion and noncompetitive pricing among firms and affiliated companies;
- Allowing a potential contractor to draft bid or proposal specifications, contract terms or conditions, or other procurement or contract documents or procurement process procedures;
- Using descriptions of goods or services that unreasonably restrict competition, such as using a specific brand name instead of issuing product specifications;
- Negotiating with a firm prior to evaluating proposals;

- Negotiating with any bidder, at any time, when competitive sealed bid procurement is used;
- Providing only certain firms with the results of pre-bid meetings or answers to bid or proposal questions;
- Releasing the contents of a bid or proposal to other bidders or proposal offerors prior to public bid opening or proposal evaluation;
- Organizational conflicts of interest;
- Less-than-arms-length transactions;
- Intentionally subdividing a purchase to avoid formal competitive procurement;
- Failing to comply with applicable State or local rules, including substituting a less restrictive State or Federal procurement small purchase threshold, unless specifically permitted;
- Failing to publicly advertise formal procurements.

Contract Terms and Conditions

Depending on the type of contract the following terms and conditions may apply. The description below indicates which type of contract the term/condition applies. only has a prototype contract for vending with a food service management company for preparation of meals. When a food service contract other than the prototype contract provided by is used, you must ensure the applicable contract terms are included and the institution must receive **written prior approval from** to use the contract.

Reporting requirements - Applies to all contracts. Contracts must provide notice of the organization's responsibility to meet CACFP and SA's reporting requirements, including applicable program regulatory citations. This notice should identify the contractor's responsibility to provide information that will permit the organization to comply with its reporting requirements.

Contract terms should identify the records, data and documents the contractor must supply to the organization and the timeframes for submission;

Record retention - Applies to all contracts. Contract terms must establish the contractor's responsibility to retain required records. Records must be retained for at least the Federal record retention period of three years **plus the current year**; however, records must be retained longer when:

- The State or the organization's record retention requirements is greater than the Federal requirement; or
- Until all pending matters, are resolved. Pending matters include contract disputes, audit, investigative and review findings.

The Federal record retention period begins with the later of the date:

- The final payment is made under the contract;
- The contract concludes; or

- The final claim for reimbursement for the fiscal year in which the contract concludes is submitted.

For renewable contracts, records of the initial procurement action through the conclusion of the final renewal must be maintained. For example, a contract is executed on August 1, 2000, and renewed for 3 more years, concluding on July 31, 2004. The records of the original procurement action for the contract executed on August 1, 2000 through the last renewal ending on July 31, 2004 comprise the body of records of the procurement.

Energy Policy and Conservation Act - Applies to all contracts. Contracts must contain the appropriate mandatory standards and policies relating to energy efficiency that are contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163, 89 Statute 871).

Termination for cause and convenience - Applies to public institutions' contracts in excess of \$10,000 and nonprofit institution contracts in excess of \$100,000. **Note: FNS recommends including termination for cause and convenience provisions in all contracts, regardless of amount.**

Both termination for cause and convenience provisions must include the manner by which the termination will occur and the basis for settlement.

Termination for cause provisions:

- Should apply equally to both parties to the contract;
- Are not be used to establish the procedures for remedying performance deficiencies. These remedy procedures are separate and apart from contract termination for cause procedures, see 6 below for information on breach of contract remedies;

Once either party is notified that a termination for cause has been determined, timely termination of the contract is required; and

- The notification must identify the basis for the determination, sent certified mail, return receipt requested, or by similar notice, and identify other actions that will result such as the forfeiture of bonds, deposits, accrual of interest, etc.

Termination for convenience clauses. The terminating party is not required to provide any reason for terminating the contract other than for its own convenience. Termination for convenience should not be used in lieu of termination for cause.

Access to records - Applies to all public institution contracts and to nonprofit institution contracts in excess of \$100,000. While not required for nonprofit institution contracts below the small purchase threshold, FNS recommends nonprofit institutions include an access to record provisions in all contracts. Contract terms must provide access to books, documents, papers and records of the contractor and any subcontractors by the Federal government, the grantee and institution.

The contract terms must ensure that sufficient access is provided to the entire scope of records required to determine contract compliance and cost allowability for costs charged to the nonprofit food service.

Breach of contract - Required for all contracts in excess of \$100,000. Provisions must provide for administrative, contractual and legal remedies for breach of contract, including sanctions and penalties, as may be appropriate. Since either party can cause a breach of the contract, both parties usually require breach of contract terms and remedies. **Note: FNS recommends including these provisions in all contracts, regardless of amount.**

The contract should contain a general provision regarding breach of contract in addition to specific breaches and the actions that will be taken for breach of contract. When either party will allow the other to remedy a breach, the procedures and timeframes should also be included in the contract. Again, both parties to the contract should be treated equally.

In general, institutions cannot use nonprofit food service account funds to pay for a breach of contract, including late payment fees, since penalty payments are not allowable costs.

Guaranteed return provisions. The most frequently used contractor remedy for breach of contract in Child Nutrition programs is the guaranteed return provision. Guaranteed return provisions provide for financial compensation to the institution when the contractor fails to meet contract terms. Since payment of the guaranteed return is a remedy for nonperformance:

- (1) The institution must ensure the financial terms are adequate compensation for nonperformance; and
- (2) Future successful performance does not negate prior period nonperformance. Payments received for breach of contract are not loans and cannot be returned to the contractor for future successful performance. If an institution agrees to refund a guaranteed return payment in a future period, the institution cannot use nonprofit food service account funds to make this payment.

Executive Order 11246, "Equal Employment Opportunity" - Applies to public institution contracts in excess of \$10,000 and all nonprofit institution contracts. Contracts must contain a provision requiring compliance with Executive Order 11246, as amended by Executive Order 11375 (October 13, 1967) and Department of Labor Regulations (41 C.F.R. Part 60). Additional information can be obtained from the U.S. Department of Labor or the State's Department of Labor.

C.F.R. Part 3018, New Restrictions on Lobbying - Applies to contracts and renewals in excess of \$100,000. Contractors must comply with the certification and reporting requirements of 7 C.F.R. 3018.

7 C.F.R. Part 3017, Suspension and Debarment - Applies to all audit or investigative service contracts expected to equal or exceed \$25,000 and all other contracts expected to equal or exceed \$100,000 and contract renewals meeting the applicable dollar thresholds. Potential contractor must certify eligibility to participate in a lower tier covered transaction. Note: This certification must be submitted with the bid and made part of the contract.

Clean Air and Clean Water Acts - Applies to contracts and subcontracts in excess of \$100,000. Contractors must certify compliance with the applicable provisions of the Clean Air Act; the Clean Water Act; the Federal Water Pollution Act; Executive Order 11738; and Environmental Protection Agency regulations.

Buy American Provisions - Applies to contracts involving food acquisitions using nonprofit food service account funds and the use, or processing, of substitutable USDA donated foods. Contracts must contain provisions meeting the requirements of the “Buy-American Provisions”.

USDA rights in data, reporting discoveries and inventions and copyrights - Applies to research, developmental (such as new food product or software), experimental or demonstration work contracts. Contract terms that comply with the standards established in USDA regulations, Part 3015.175, 3016.34, and 3019.36 concerning USDA rights to copyrighted materials, patent rights; rights in data and contractor responsibility to report discoveries and inventions are required.

Construction and repair contracts and subcontracts - Applies only to the construction and repair contracts and subcontracts. These contracts must contain:

- The Copeland "Anti-Kickback Act" (18 USC 874) as supplemented by Department of Labor regulations (29 C.F.R., Part 3); and
- Provisions of the Contract Work Hours and Safety Standards Act (40 USC 327-330), as supplemented by the Department of Labor Regulations (29 C.F.R. 5) for applicable contracts in excess of \$100,00. Applicable contracts include construction contracts and subcontracts in excess of \$2,000 and other contracts and subcontracts in excess of \$2,500 involving the employment of mechanics or laborers.

Prototype Contract and Sample Agreement

CACFP and SFSP Regulations require the state agency to have a standard form of contract for use by institutions when contracting with Food Service Management Companies. Each program has a different prototype contract to be used and these prototype contracts can be obtained from . When a food service contract other than the prototype contract provided by is used, the institution must receive **written prior approval from** to use the contract.

When the procurement action falls beneath the small purchase threshold, then an Agreement may be used instead of a contract. had developed a sample agreement for use. The sample agreement is found in Addendum B of this manual. The sample agreement is not a mandatory form that must be used by the institution. It is only a sample. The institution may modify the agreement to include specific terms or conditions as necessary as long as these terms and conditions are not in violation of program requirements and regulations. Modification to the sample agreement does not require prior approval from .

Glossary

Aggregate is the total annual purchases of similar items that can be reasonably combined to conduct an efficient procurement action.

Agreement is the written documentation that results from an award under the small purchase procedures. The agreement can be as simple as a purchase order or as formal as a contract.

Allowable cost means an amount meeting the requirements of the applicable Program, State and USDA regulations, guidance and instructions and the OMB Cost Circulars.

Award is the acceptance of a bid or proposal from a potential contractor that leads to the execution of a binding contract between the parties.

Bid is the response submitted by a prospective contractor to an invitation for bid.

Bidder is a prospective contractor in a competitive sealed bidding procurement.

Competitive Proposal Procurement, formerly known as competitive negotiation procurement, is a formal method of procurement that requires the submission of offers in response to a Request For Proposal (RFP), evaluation of the offers and negotiations with successful offerors. A competitive proposal procurement results in the award of either a fixed price or cost reimbursable contract to the successful offeror based upon price and other factors.

Competitive Sealed Bidding is a formal method of procurement that requires submission of a sealed bid in response to an Invitation For Bid (IFB). A competitive sealed bid procurement results in the award of a fixed price contract, with or without price adjustments, to the responsive and responsible bidder whose price is lowest.

Contracting agency is the organization that has the authority to enter into, administer, or terminate contracts and make related determinations and findings.

Contractor is a commercial enterprise, public or nonprofit private organization or individual that enters into a contractual arrangement with a school food authority, CACFP institution or SFSP sponsor.

Contract is a mutually binding, legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. Under Federal procurement requirements, a contract must be in writing. A written contract that encompasses the rights, responsibilities, obligations and prohibitions of the parties is required when formal procurement methods are used. The term contract includes subcontracts under contracts.

Cost means an amount determined on a cash, accrual or other basis acceptable to contracting agency.

Cost Plus a Percentage of Cost is a prohibited contract cost method that provides the contractor with revenue above costs based upon a percentage of the costs incurred by the contractor.

Cost Plus a Percentage of Income is a prohibited contract cost method for FSMC contracts. The cost plus a percentage of income cost method provides the contractor with revenue above costs based on a percentage of income derived from contract activities.

Cost Reimbursable is a contract cost method that reimburses the contractor for the actual, allowable net costs incurred under the contract.

Cost Reimbursable with Fixed Fee is a type of cost reimbursable contract that includes reimbursement for costs plus a fee fixed on a per unit basis or lump sum.

Discounts are reductions applied to current prices.

Firm Fixed Price is a contract cost method that establishes a fixed price, usually on a per unit basis, for the goods and/or services provided by the contractor for the duration of the contract, including renewals.

Firm Fixed Price with Economic Price Adjustments is a contract cost method that allows for upward and downward price adjustments to the stated contract price when certain events that are specified in the contract occur. Dairy product contracts in the CN programs that are have price changes indexed to milk marketing orders are an example of this form of contract pricing.

Firm Fixed Price with Prospective Price Redetermination is a contract cost method that establishes a firm fixed price for the initial contract period, but allows for changes (increases or decreases), at stated times. Often, the time period for a price change coincides with contract renewal.

Formal Procurement Methods include Sealed Bid and Competitive Proposal procurement methods. Formal procurement methods are required when the expenditures for annual aggregated purchases exceed the small purchase threshold.

Food Service Management Company is a commercial enterprise or nonprofit organization. NOTE: Refer to the appropriate CN program regulations for a more explicit definition. CACFP defines a FSMC as an organization other than a public or private nonprofit school, while the SFSP includes these organizations in the definition of the FSMC. CACFP institutions and public SFSP sponsors can contract with a FSMC for preparing and, unless otherwise provided, for delivering meals, with or without milk.

Invitation for bid is the document used to solicit a response in the sealed bid procurement method. The invitation for bid specifically defines the goods or services for which bids are sought and includes instructions prescribing all conditions for bidding.

Less-than-arms-length transaction is one under which one party to the transaction is able to control or substantially influence the actions of the other(s). Such transactions include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization

and a director, trustee, officer, or key employee of the school/ institution/sponsor or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

Master supplier list means a list of suppliers that have satisfied specific criteria for participation in procurement transactions.

Noncompetitive Contract is a contract awarded without any competition. Noncompetitive contracts do not include sole source contracts or contracts awarded under noncompetitive negotiation, both of which require negotiation. Costs resulting from noncompetitive contracts are unallowable in all Child Nutrition Programs.

Noncompetitive Negotiation is a procurement method that requires negotiation with at least one potential supplier and can only be used in specific situations.

Offer is the response submitted by a prospective contractor under a competitive proposal or noncompetitive negotiation procurement.

Offeror is the prospective contractor under competitive proposal or noncompetitive negotiation procurement.

Procurement is the process of acquiring goods or services.

Purchases include cash, credit, rental, and barter transactions.

Qualified product list means a list of products that have been examined, tested and have satisfied all applicable qualification requirements.

Rebates are price reductions applicable to prior prices.

Request for proposal is the document used to solicit a response in the competitive negotiation procurement method. The request for proposal includes general information, functional or general specifications, statement of work, proposal instructions and evaluation and ranking criteria.

Renewal means contracting with the same contractor for an additional contract period, after the initial contract period, pursuant to contract terms that specially provided for the renewal.

Responsive means a bid or offer meets all material requirements of the solicitation.

Responsible means the bidder or offeror possesses the ability to perform successfully under the terms and conditions of the proposed award.

Sealed Bid Procurement, also known as Formal Advertising, is a formal method of procurement that uses sealed bidding and results in a firm, fixed price contract awarded to the responsible bidder, whose bid, conforming with all the material terms and conditions of the invitation for bid, is lowest in price.

Small Purchase Threshold is an amount under which simplified procurement procedures may be used. Currently, the Federal acquisition small purchase threshold is set at \$100,000, except for certain for profit CACFP institution acquisitions.

Sole source means an item with no functional equivalent that is available on a national and international basis from only one source. It does not apply when competition is limited due to a lack of local suppliers or when an item that is made by only one manufacturer is distributed and available through more than one supplier.

Solicitation is an IFB, RFP or small purchase procedure price quote request.

Specification is the description of the characteristics of specific goods or services. A specification contains the explicit requirements furnished with a solicitation upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the goods and services to be purchased so as to enable the vendor to determine and understand what is to be supplied. This information may be in the form of a description of the physical, functional, or performance characteristics and it may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery. Specifications may be incorporated by reference and/or through attachment to the solicitation.

Unallowable cost is the amount of any cost which, under the provisions of the pertinent law, regulations or contract, cannot be included in prices, cost-reimbursements or charges under the contract to which it is allocable. The amount may be specifically prohibited as a cost in the CN programs or fail to meet the requirements of an allowable cost.

Vendor for the SFSP, means a supplier of meals.

Appendix A: Step by Step Procurement Checklist

Sponsor Name: _____

Agreement # _____

The following checklist should only be completed by those organizations that are contracting out for meal service with either a Food Service Management Company or a School Food Authority. A School Food Authority is any private or public school nutrition program. Complete Section I and follow instructions for completing the rest of checklist. This checklist is completed to demonstrate whether a new procurement is needed and/or that the procurement process was properly conducted.

Section I – Answer each question as applicable.

- 1) Indicate the type of organization the institution is using as a food service vendor for the upcoming year?

☐ School Food Authority ☐ Food Service Management Company or Other Vendor

If School Food Authority, 1) submit a copy of the Agreement to Furnish Food; 2) sign and date on page 2 of this checklist. You do not have to complete the remaining Sections or Steps.

- 2) Was the organization required to conduct a formal procurement last year?

☐ YES If yes, answer #3.

☐ NO If no, complete the Step-by-Step Checklist in Section II below as it applies to your organization and the procurement process that was actually conducted. Do not proceed to question 3.

- 3) Is the contract for the upcoming year essentially the same as last year's contract and the contract being renewed? ☐ YES If yes, submit the renewal contract and do not proceed with rest of checklist.

☐ NO If no, a new procurement is needed. Complete the checklist based on the new procurement that was conducted.

Section II

Use the STEP-BY-STEP guide (begins on page 4) in the procurement manual to work through the procurement process and complete the steps based on how the procurement was conducted.

Step 1: Check below the type of Institution that is purchasing services/meals from prospective vendors.

- ☐ Public School
☐ Public Institutions (local governments)
☐ Private Non-profit Institutions

Step 2: Find your type of institution, refer to column 5 of the Step-by-Step Guide (page 4 of Procurement Manual), then check below the procurement codes that were be used to when conducting the procurement.

Public School

- ☐ State procurement codes
☐ Local procurement codes

***If using local procurement codes, submit a copy of the procurement guidelines with the contract.**

Public Institution

- ☐ State procurement codes
☐ Local procurement codes

***If using local procurement codes, submit a copy of the procurement guidelines with the agreement/contract.**

Private Non-profit

- ☐ Federal procurement codes
☐ Institutions own procurement codes

***If using institutions own codes, submit a copy of the procurement guidelines with the agreement/contract.**

Appendix A Procurement Checklist

Step 3: Indicate the aggregate (total) amount of goods/services to be purchased for the upcoming contract year. Refer to the Step-by-Step Guide for information on how to determine the aggregate amount of the contract.

Price Per Meal	Meal Type	X	# Meals Needed Per Day *	X	# of Operating Days for Contract Period **	=	Estimated Total Cost of Food Service Contract
\$	Breakfast	X		X		=	\$
\$	AM Snack	X		X		=	\$
\$	Lunch	X		X		=	\$
\$	PM Snack	X		X		=	\$
\$	Supper	X		X		=	\$
\$	Evening Snack	X		X		=	\$
Total Estimated Cost of Food Service for Contract Period***							\$

*If the number of meals vary per day, submit documentation to indicate how the organization estimated the number of meals needed for the contract period and determined the total contract price.

**The contract period should not extend beyond one year. Therefore, the number of operating days should equal the total number for the year.

***If contract price is below Small Purchase threshold, an Agreement can be signed. Otherwise formal procurement must be conducted.

Step 4: Check your type of institution. Write in the small purchase threshold of the codes being used. If the Total Estimated Cost of Food Service amount in Step 3 is larger than the small purchase threshold, formal procurement is required. Check the type of procurement conducted.

Public School- State/local small threshold is \$_____.

- ☐ Formal procurement –If formal procurement must be done
- ☐ Informal (Small Purchase) procurement

Public Institution- State/local small threshold is \$_____.

- ☐ Formal procurement
- ☐ Informal (Small Purchase) procurement

Private Non-profit Institution- Federal small purchase threshold is \$100,000.

Institution's own small purchase threshold is \$_____.

- ☐ Formal procurement (required if contract is greater than \$100,000)
- ☐ Informal (Small Purchase) procurement (required if contract is less than \$100,000)

If an informal procurement can be used, do not proceed to Step 5. The institution may use the sample Agreement to Furnish Food provided by Bright from the Start with the prospective vendor. Submit the Agreement with this checklist.

Step 5: If formal procurement was necessary, indicate the method that was used.

- ☐ Sealed Bid – Must use Bright from the Start's prototype Invitation for Bid unless waiver granted by State Agency
- ☐ Other: _____ (Must have prior approval from State Agency and or USDA.)

☐ I certify that the organization has made every effort in good faith to conduct a procurement process in compliance with the applicable regulations and will maintain all documentation of the procurement process.

Signature of Authorized Official

Date

Appendix B: Small Purchase Item Documentation

Bright from the Start: Georgia Department of Early Care and Learning

Name of Individual Soliciting Information: _____

Instructions: Use this form to document the small purchase procedures. Attach additional supporting documentation to this form. Circle or note the vendor selected. Complete bottom section if the lowest bidder was not selected.

Vendor Name, Address, Telephone	Individual's Name and Position Providing Price Quote	Description of the goods or services, including quantity, any other pertinent terms or conditions required by the organization and date of services	Date of Contact	Method of Contact	Discussion with Vendor	Price Quote and Duration	Final Negotiated Price
Vendor 1							
Vendor 2							
Vendor 3							

If the lowest bidder was not selected, document below the reasons the lowest bidder could not meet the specific contract terms sought.

Appendix C-1: Agreement to Furnish Food: Service for the Summer Food Service Program

This agreement is made and entered into between _____ and _____
Name of Vendor Providing Meals
 _____, WHEREAS the _____ agrees to provide daily
Name of SFSP Institution Name of Vendor Providing Meals
 unitized meals (inclusive/exclusive) of milk to _____ for the rates herein listed:
Circle one option Name of SFSP Institution

Price Per Meal	Meal Type	X	# Meals Needed Per Day	X	# of Operating Days for Contract Period *	=	Estimated Total Cost of Food Service Contract
\$	Breakfast	X		X		=	\$
\$	AM Snack	X		X		=	\$
\$	Lunch	X		X		=	\$
\$	PM Snack	X		X		=	\$
\$	Supper	X		X		=	\$
\$	Evening Snack	X		X		=	\$
						Total Estimated Cost of Food Service for Contract Period	\$

*The contract period should not extend beyond one year. Therefore, the number of operating days should equal the total number of days the center will be open for food service for the year.

It is further agreed that _____, pursuant to the provisions of the Child and Adult Care Food
Name of Vendor Providing Meals
 Program regulations, 7 CFR Part 225**, attached copy of which is part of this agreement, will assure that said meals meet the minimum meal pattern requirements as to components and portion sizes, as found in SFSP regulations § 225.16 and the "SFSP Food Crediting Guide," and will maintain full and accurate records that _____ will
Name of SFSP Institution
 need to meet its responsibility, including menu records containing the amount of food prepared and daily number of meals delivered by type.

It is further understood that the SFSP institution is ultimately responsible for documenting and assuring nutritional adequacy according to 7 CFR 225.

These records must be reported to _____ promptly by the last calendar day of the month.
Name of SFSP Institution

_____ agrees also to retain records required under the preceding clause for a period
Name of Vendor Providing Meals
 of three (3) years from the date of receipt of final payment under this agreement (or longer, if an audit is in progress); and upon request, to make all accounts and records pertaining to the Program available to Bright From the Start, Georgia Department of Early Care and Learning, USDA and the General Accounting Office for audit or administrative review at a reasonable time and place.

This agreement shall be effective as of _____ through _____. It may be terminated by notice in writing
Date: MM/DD/YY Date: MM/DD/YY
 given by any party to the other party, at least 10 days prior to the date of termination.

IN WITNESS THEREOF, the parties hereto have executed this agreement as of the dates indicated below:

 Signature and Title of Vendor

 Signature and Title of SFSP Institution

 Date: MM/DD/YY

 Date: MM/DD/YY

****A copy of the SFSP regulations and USDA Food Crediting Guide should be provided to vendor along with agreement.**

The Summer Food Service program is an equal opportunity program. If you believe you or anyone has been discriminated against because of race, color, national origin, sex, age, or disability, write immediately to: USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382.

Appendix D: Procurement Questions and Answers*

* This Q and A is only applicable to participants in the Summer Food Service Program.

Purchased and vended meals

Question 1: If a sponsor wants to contracts with a catering company to provide bulk food items and the sites put the meals together, is the sponsor considered to have vended or self-prep food service operation?

Answer: According to SFSP regulations, 7 CFR 225.6(h) (3)) food service management companies or school food authorities must provide unitized meals. Given this regulation, even though the caterer cooks and delivers the bulk food to the sponsor's sites, the sponsor's food preparation is considered to be a "self-prep" operation because the sponsor is not receiving a unitized meal but bulk food items.

The catering company serves as a "supplier" of the food, in the same way a milk vendor is considered a supplier of milk. The self-prep sponsor uses vendors to help it prepare its meals but it does not have a "vended" food service operation because it does not receive unitized SFSP meals.

Question 2: Under the same scenario in Question 1, what procurement requirements are needed, if any?

Answer: When seeking a contract with a caterer or milk vendor, the self-prep sponsor is not required to use the standard SFSP Invitation for Bid/Contract form, which is designed only for food service management companies (FSMC) for unitized meals. However, the self-prep sponsor still has to follow procurement guidelines for any other type of contracted "good or services." If the contract falls at or below \$100,000, the self-prep sponsor must follow the small purchase procedures, pages 9-10, along with submitting a completed Addendum B: Small Purchase Item Documentation. If the contract exceeds the \$100,000 threshold, the self-prep sponsor must use the sealed bid procedures detailed on pages 10-13.

Question 3: Under the same scenario in Question 1, what are the recordkeeping requirements for this self-prep sponsor?

Answer: If the SFSP competitively procures for companies to prepare bulk food items, and awards the contract to a caterer, the self-prep sponsor would have to maintain receipt of the food delivered by the caterer, just as the sponsor would have to keep a receipt of the food ordered for a food supplier. The receipt must include a description along with the quantity and type of bulk food that was received at each site. In this sponsor's case, since the sites are individually unitizing the meals by serving the correct meal component and quantity, the sites must maintain the "Daily Menu Production Worksheet," found in the SFSP Nutrition Guidance to record the number unitized meals prepared from the bulk food items. Additionally, the self-prep sponsor must ensure that any food items prepared adhere to the USDA meal pattern requirements.

Question 4: A SFSP private non-profit (PNP) sponsor (Sponsor A) does not have on-site kitchen facilities. It wants to buy meals from another PNP SFSP sponsor institution (Sponsor B), which operates a central kitchen. Can Sponsor A buy meals from Sponsor B without conducting a procurement?

Answer: No. Sponsor A must conduct a procurement. It cannot sole source.

Question 5: A sponsor advertised their bid for 10 days and only got 1 bid. What should the sponsor do?

Answer: The regulations require that, “all proposed contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening.” Since the announcement period should still be open, the sponsor should immediately announce an extension of the deadline to meet the required 14-day timeframe even if it delays the opening of sites for a few days versus advertising the bid again.

Question 6: A sponsor received 2 vendor bids. One bid was slightly lower than the other. The sponsor wants to work with the vendor with the higher bid due to the fact that the other vendor as been problematic. Is this reason sufficient for the sponsor to proceed with the vendor with the higher bid?

Answer: Yes. The sponsor can work with the vendor that has the slight her bid. The sponsor would have to document the reasons for selecting the higher bidder, and include the fact that the only other bidder has been problematic.

Question 7: A hospital operates a summer food service site in its facility. The hospital’s food service provides meals to the center on an actual cost per meal basis. Since the center is paying for these meals, must the center conduct a procurement to obtain meals?

Answer: No. Even though the hospital is billing the center for meals, the center and the hospital are the same organization. The center is considered to have a self-operated, not vended, food service in this situation.

Question 8: A state university plans to provide SFSP meals at its NYSP and Upward Bound sites within, or nearby, its campus. The university’s food service is provided under a contract with a commercial food service management company (FSMC). This FSMC provides meals to these sites as part of its university food service. Does the university need to conduct a separate procurement or ensure the universities procurement included these SFSP sites and meals?

Answer: No, as long as the value of the contract is less than \$100,000. The NYSP and Upward Bound sites are part of a public organization, the state university. Consistent with the principles of Federalism, a public organization is considered to be in compliance with applicable procurement requirements, unless there is information to the contrary. However, the university must ensure that the meals provided through the university’s food service meet USDA regulatory requirements. A copy of the existing contract or contract renewal must be submitted with the SFSP application.